

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of Bell Atlantic Corporation for Relief)
 from Barriers to Deployment of Advanced) CC DOCKET No. 98-11
 Telecommunications Services)

REPLY COMMENTS OF NYSERNET

I. Introduction

NYSERNet, Inc. is a private not-for-profit corporation whose purpose is to pioneer and apply leading edge networking technologies on behalf of New York's educational and research institutions. We believe this mission will be advanced more rapidly if Bell Atlantic is able to provide broadband data communications services free of interLATA and other regulatory restrictions, and we support its petition for relief under Section 706 of the Telecommunications Act of 1996.^{1/}

II. NYSERNet's Perspective on the Issues Raised by the Bell Atlantic Petition

NYSERNet was one of the principal architects of today's Internet. Founded in 1985, NYSERNet was the first organization independent of the U.S. government to build and operate a TCP/IP network. Representatives of New York's leading educational institutions created the NYSERNet consortium.^{2/} In 1989, PSI, Inc. was spun off from NYSERNet to

^{1/} Pub. L. No. 104-104, 110 Stat. 56.

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^{2/} NYSERNet members include Cornell University, Columbia University, New York University, Syracuse University, the University of Rochester, Rensselaer Polytechnic Institute, Polytechnic University, Rockefeller University, Clarkson University, The City University of New York, Brookhaven National Laboratory, and the four SUNY university centers at Stony Brook, Albany, Buffalo, and Binghamton.

become one of the first commercial Internet Service Providers (ISPs). In 1996, NYSERNet created a for-profit affiliate called Applied Theory Communications to handle commodity Internet connectivity so it could remain focused purely on leading edge networking in support of research and education.

When NYSERNet began operations, "high speed" networking meant 56 Kbps. Today, NYSERNet is in the process of building NYSERNet 2000, which will be an evolving broadband testbed network operating initially at 622 Mbps and incorporating features not currently available in commercial network deployments. This regional component of the national Internet2 initiative will create new markets for network hardware and for network-related products and services.

New York State represents one of the largest emerging markets for advanced network services. The education industry is one of New York's leading employers, and New York is second in the nation in university-based research. Indeed, according to the National Science Foundation, five of the top ten states for research and development expenditures are in the Bell Atlantic region (NY, MA, NJ, PA, MD).

While NYSERNet can appreciate the complexity involved in reaching a determination on this petition, we remind the Commission that time is of the essence in the development of advanced networking. We do not believe there is a realistic possibility of Bell Atlantic engaging in anticompetitive behavior in this market segment. However, as NYSERNet and other organizations build next generation networks, the current regulatory structure will prevent the formidable resources of Bell Atlantic and the other regional Bell operating companies from being applied to this effort. These companies' investment decisions are more regulatory-driven than they are subject to open competition, to the detriment of buyers of telecommunications services such as NYSERNet.

NYSERNet believes that Bell Atlantic's deployment of an ATM/SONET infrastructure will be accelerated if the petition is granted, and that this will allow NYSERNet to more effectively serve educational and not-for-profit organizations throughout New York State.

III. Granting Bell Atlantic's Petition Will Benefit the NYSERNet 2000 Network

NYSERNet is developing the NYSERNet 2000 network in three stages. First, the NYSERNet 2000 backbone is being deployed along the right-of-way of the New York State Thruway, with nodes in Buffalo, Rochester, Syracuse, and Albany, and a GigaPoP in the New York City area. In phase two, member institutions in major metropolitan areas located near NYSERNet nodes will be connecting to NYSERNet 2000 through high bandwidth local links. In the third phase, NYSERNet plans to extend its network throughout New York State so that research and educational institutions outside of major metropolitan areas can efficiently access NYSERNet 2000 and the next generation Internet.

Granting Bell Atlantic's petition will benefit NYSERNet in each of the three phases of NYSERNet 2000 network development. In the provision of backbone services, Bell Atlantic's entry would bring a new and potentially efficient competitor to the market. In the provision of local access to NYSERNet 2000 in major metro areas, NYSERNet sees a rapidly increasing need for deployment of high capacity access connections. NYSERNet believes that the regulatory relief Bell Atlantic seeks would provide it with economic incentives to invest more aggressively in broadband infrastructure in such areas. Finally, in the smaller metro markets and rural areas, where there is little or no competition in high bandwidth services, Bell Atlantic's provision of high speed connections is likely to be essential for the educational and research community. A regulatory regime that makes

investment in these areas more difficult or less cost efficient works directly against the interests of users like NYSErNet and its members.

A. Provision of Service on the NYSErNet Backbone

Backbone services, by their nature, cross LATA boundaries. Bell Atlantic is barred from providing backbone service due to the interLATA restriction contained in Section 271 of the Communications Act of 1934, as amended.^{3/}

There are currently several companies providing backbone services in New York State. NYSErNet has successfully worked with, and will continue to work with, a number of these service providers. Nonetheless, Bell Atlantic's entry into the market would be beneficial. Another strong competitor with significant ties to the state and extensive experience in telecommunications will make the market for backbone services even more competitive, and help spur innovation and more rapid deployment. Bell Atlantic has the potential to be an efficient and reliable provider of backbone services.

Moreover, NYSErNet believes there is no way that Bell Atlantic or any other incumbent local exchange carrier (ILEC) could possibly leverage any local exchange bottleneck facilities to gain an unfair competitive advantage in the provision of backbone services. With the number of players already in the market, including some of the largest telecommunications companies in the world (such as MCI/Worldcom and Sprint), there is little chance that Bell Atlantic could ever dominate or monopolize this market. Thus, NYSErNet sees potential benefits from Bell Atlantic's entry into this market, with virtually no potential risks of anticompetitive conduct or other negative impacts. Accordingly,

^{3/} 47 U.S.C. § 271.

NYSERNet supports Bell Atlantic's request for lifting the interLATA restriction to provide backbone services.

B. Service to Large Metro Areas

The NYSERNet nodes are located in the large metro areas in New York State. Access to NYSERNet 2000 by institutions located in these areas would be considered intraLATA, and therefore not subject to the restrictions of Section 271. NYSERNet and its member institutions have found, however, that Bell Atlantic faces other difficulties in the provision of intraLATA high speed access to NYSERNet 2000.

There are a number of companies able to provide high speed access connections in large metro areas. While Bell Atlantic does participate in this market, it faces significant regulatory hurdles to widescale deployment. NYSERNet does not agree with the contention of the Association for Local Telecommunications Services that regulatory barriers are not a disincentive to broadband deployment.^{4/} It has been NYSERNet's experience that regulatory factors, not market demand, often drive Bell Atlantic's decisions on where and how fast to deploy these services. The Competitive Telecommunications Association asserts that the market is already responding to broadband demand,^{5/} but Bell Atlantic seems to be the only company not permitted to respond freely to market demands.

Deployment of these high speed data services should be free from the unbundling, resale, and pricing regulations designed for the circuit-switched voice network. For example, unbundling may be appropriate for bottleneck local exchange facilities, but not for competitive special access services. This is especially the case for the high bandwidth connections required for the NYSERNet 2000 network, which generally entail new

^{4/} Comments of the Association for Local Telecommunications Service at pp. 12-20.

^{5/} Competitive Telecommunications Association Comments at pp. 3-7.

investments in broadband infrastructure. If Bell Atlantic were free to provide these services on an unregulated or less-regulated basis, NYSERNet believes that deployment of, and investment in, advanced telecommunications services by both Bell Atlantic and its competitors will increase, creating lower prices and new and better services for NYSERNet and its members.^{6/} As with backbone services, NYSERNet sees little risk of anticompetitive consequences from these deregulatory measures. Therefore, NYSERNet supports Bell Atlantic's request for forbearance from the unbundling, resale, and pricing requirements for deployment of such broadband services.

C. Service to Smaller Metro Areas and Rural Areas

NYSERNet needs affordable, high speed connections to NYSERNet 2000 for institutions located outside of major metro areas. In particular, upstate New York has many universities and research institutions located a great distance from the NYSERNet backbone and NYSERNet nodes. Some of these institutions are located in smaller metro areas, and some are located in rural areas. For these institutions, it will be difficult to achieve high speed, cost-effective access to NYSERNet 2000.^{7/} In these areas, Bell Atlantic's active and committed participation in providing broadband connectivity services is likely to prove critical.

^{6/} NYSERNet also supports Bell Atlantic's requested relief for deployment of xDSL services. NYSERNet members do not use xDSL services to connect to NYSERNet 2000, but students, teachers, researchers, and others at these institutions will benefit from widescale deployment of xDSL services. Nevertheless, the focus of these Reply Comments is on the broadband connectivity services that NYSERNet's member institutions will need to access NYSERNet 2000.

^{7/} Additionally, NYSERNet hopes that schools and libraries throughout the state will eventually be able to take advantage of NYSERNet 2000. NYSERNet agrees with the comments submitted by Organizations Concerned about Rural Education, noting that, unless barriers to investment are alleviated, rural schools and libraries may not be able to take advantage of broadband services. Comments of Organizations Concerned about Rural Education at P. 1. See also, Comments of Chief State School Officers.

At the present time, competition in these smaller metro and rural areas is limited or, in some cases, non-existent. Under the current regulatory scheme, broadband deployment in smaller metro and rural areas may not appear to be an economical investment, even for the incumbent provider of local service, Bell Atlantic. The Commission should forbear from imposing regulations that hinder deployment of broadband services to smaller metro and rural areas. Otherwise, Bell Atlantic may not find it in its interest to deploy these services in such areas, leaving many institutions without effective access to NYSErNet 2000 and other broadband network services.

Moreover, many of these connections in rural areas will need to cross LATA boundaries to reach NYSErNet 2000 nodes. Bell Atlantic is prevented from providing these connections due to the interLATA restriction contained in Section 271. NYSErNet supports Bell Atlantic's request that the Commission forbear from applying the interLATA restriction to the provision of high speed data services so that Bell Atlantic can serve these smaller metro and rural areas. Barring Bell Atlantic from providing service to unserved or underserved areas simply makes no sense for NYSErNet or its members.

IV. Continued Development of Regional and National High Speed Networks

The evolution of Internet2 will allow research universities to move off the current, commercial Internet onto a second generation network, where the applications, speed, and capacity are more appropriate for advanced research applications. NYSErNet is part of the East Coast GigaPoP Consortium (ECGC), a group of advanced regional networks in the Eastern United States, many of which are located within Bell Atlantic's operating territory. The interconnection of NYSErNet with other regional networks is essential to the creation of advanced networking services in support of our research and educational institutions.

If the Internet2 is to become a reality, NYSERNet and ECGC members will need access to very high capacity regional connections. Moving ECGC members' higher speed, bandwidth-intensive traffic off the commercial Internet and onto a dedicated, advanced network infrastructure will help relieve some of the congestion currently experienced on the commercial Internet. Thus, the enhanced competition and investment in the very high bandwidth services used as part of Internet2 will benefit not only the research and education community, but also the general public by freeing up needed capacity on the current commercial Internet. NYSERNet believes that the Commission can help stimulate such competition and investment by adopting deregulatory policies that allow Bell Atlantic and similarly situated carriers to be active participants in the evolution of the Internet2 and related regional networks.

V. Conclusion

As the Commission has repeatedly recognized, the principal goal of the landmark Telecommunications Act of 1996 is to establish "a pro-competitive, de-regulatory national policy framework to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans"

Preamble to Telecommunications Act of 1996. In furtherance of this goal, Congress directed the FCC and State regulatory commissions "to encourage the deployment ... of advanced telecommunications capability," through regulatory measures, including forbearance, that promote competition and remove barriers to infrastructure investment. Section 706(a), Telecommunications Act of 1996.

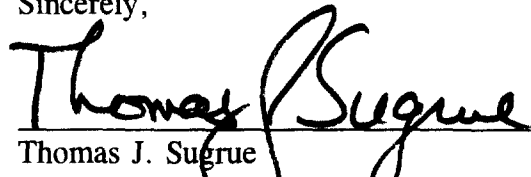
The Commission has an extremely important task before it in implementing these Congressional mandates. In particular, NYSERNet recognizes the Commission's need to take a balanced approach to deregulation, especially for traditional telecommunications

services that are just now beginning the transition from monopoly provision to competition. However, NYSERNet also believes that the time to deregulate the provision of high bandwidth services is now. The growth of the Internet, the advent of Internet2, and the constant growing demand for bandwidth require the Commission to treat broadband data services differently from traditional telephone services. If not, Bell Atlantic and other ILECs will be denied the ability to effectively participate in the provision of high bandwidth services, and users in the education and research communities will be denied a reasonable service alternative. In some smaller metro and rural areas, such users may be completely denied the availability of broadband services necessary to participate fully in the next generation Internet and component regional networks.

In short, regulatory restrictions on Bell Atlantic's offering of these services is not necessary to protect the interests of users like NYSERNet and its members. To the contrary, such regulation tends to reduce the availability of competitive alternatives and retard critically needed investment in new infrastructure. For these reasons, NYSERNet supports the Bell Atlantic petition and respectfully requests that the Commission grant the relief requested therein.

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Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Sugrue", written over a horizontal line.

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